

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-35 and 38-39 are pending in the application, with claims 1, 16, 23, 30 and 39 being the independent claims. Claims 31 and 36-37 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Claim 23 has been amended to more clearly point out and distinctly claim the subject matter of the present invention. Descriptive support for the amendment is found in the specification as filed. The amendment is believed to introduce no new matter, and its entry is respectfully requested.

Claims 1-39 stand rejected under 35 U.S.C. § 251 as being based on a defective reissue oath or declaration. Claims 23-39 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Based on the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and they be withdrawn.

#### **I. *The Reissue Declaration is Proper***

Claims 1-39 stand rejected under 35 U.S.C. § 251 as being based on a defective reissue oath or declaration.

The substitute reissue declaration provided herewith states that U.S. Patent No. 6,332,495 (“the ‘495 patent”), for which reissue is sought, is wholly or partially inoperative because claim 1 of the ‘495 patent failed to recite, *inter alia*, “a radiator core defining a front and a rear face thereof and including a plurality of generally rectangular shaped tubes interleaved with layers of fins for passage of air through said core . . . said tubes each terminating at one end thereof in a formed segment wherein said end walls of each tube are bifurcated for a distance from said one end of the tube to define planar portions disposed substantially normal to said side walls and one of said side walls is adapted to contact a side wall of an adjacent tube in the core”, as recited in newly added claim 23.

This substitute declaration further clarifies that the aforementioned error has caused the ‘495 patent to be wholly or partially inoperable. The specific error in failing to include these

aspects recited in claim 23 is the Applicant's error because the Applicant failed to include claims that more precisely correspond to the claims in U.S. Patent No. 6,513,585 to Brost, *et al.* ("Brost") for which an interference is sought. *See* M.P.E.P. § 1449.02 (citing *In re Metz*, 1998 U.S. App. LEXIS 23733 (Fed. Cir. 1998)). According to clear and unambiguous precedent, this is a grounds for which reissue may be sought. *Id.* Thus, the Applicant has provided the Examiner with both (1) one specific error in the newly presented claims and (2) the legally-sufficient rationale for which reissue is sought, as required by the M.P.E.P. *See* M.P.E.P. § 1414 II(A).

Therefore, in light of the newly submitted reissue declaration, the Applicant respectfully requests that the Examiner withdraw the rejection of the claims under 35 U.S.C. § 251.

## **II. *Claims 23-35 and 38-39 Comply with the Written Description Requirement***

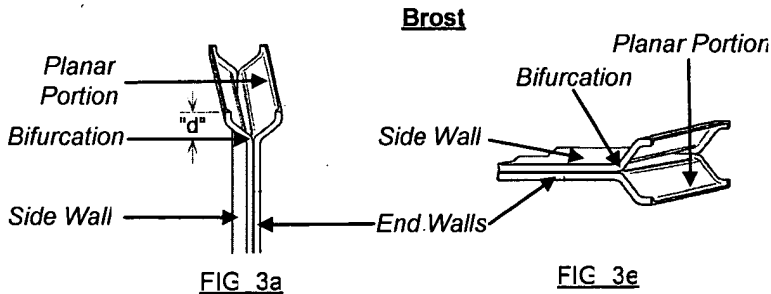
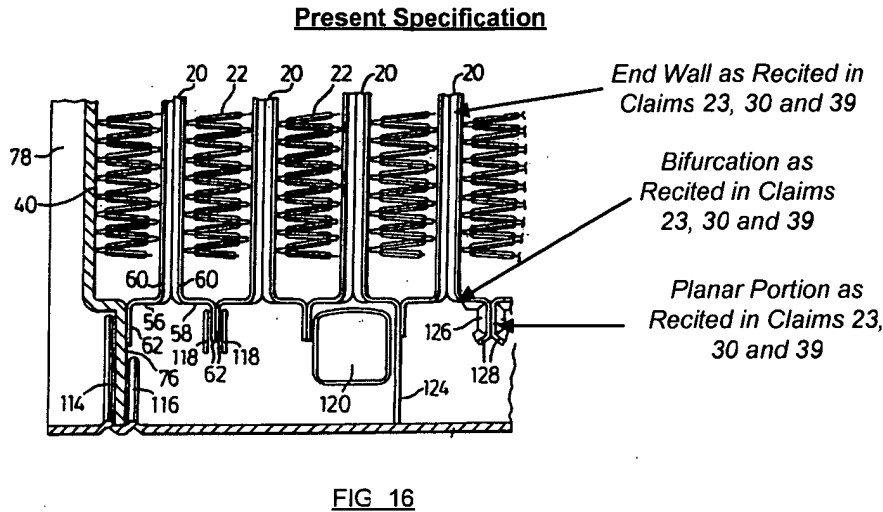
Claims 23-39 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. For the following reasons, this rejection is respectfully traversed.

With respect to claims 23, 30 and 39, the Examiner argues that "[t]he only structure corresponding to the claimed 'planar portions' in the applicant's disclosure are the raised flanges 50, 52 which, as clearly shown, do not extend normal to the flat portions 46 corresponding to the claimed 'side walls' of Brost. It is also clear that these mating flanges do not engage in 'substantial surface to surface contact with the walls 70, 72 of the header but rather engage in surface contact with the flanges of an adjacent tube half.'" *See* Office Action, p.5.

However, the Applicant respectfully submits that the Examiner is misinterpreting the recitations of claims 23, 30 and 39 of the present application (corresponding to claims 1, 8 and 19, respectively, of Brost. As outlined below, the Applicant respectfully submits that all of the recitations of claims 23, 30 and 39 of the present application are sufficiently disclosed so as to comply with the written description requirement.

The Applicant would like to direct the Examiner's attention to the portion of figure 16 of the present application and the portions of figures 3a and 3e of Brost reproduced below. As illustrated below, the end walls, the bifurcation and the planar portion, as recited in claims 23, 30

and 39, are disclosed in the specification of the present application and may be matched with each respective element in the Brost disclosure.



Further, support for this interpretation of the claims of the present application may be found at column 3, lines 26-55 and column 6, lines 31-38 in the specification, where each element illustrated in the figures is discussed. Additionally, the recitation of a “collecting tank having end walls thereof extending over [the] front and rear faces of [the] core past said bifurcation of said end walls in substantial surface to surface contact with [the] planar portions” is clearly supported by figures 3 and 16 of the specification.

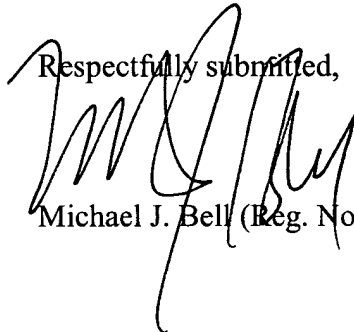
Therefore, the Applicant respectfully requests that the Examiner withdraw the rejection of the claims under 35 U.S.C. § 112, first paragraph.

### ***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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